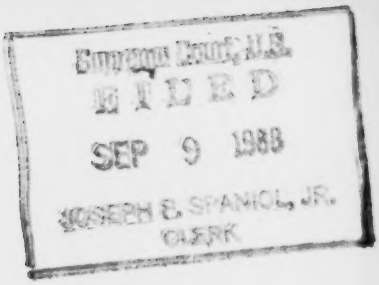

(4)

No. 88-164

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

THE WEYERHAEUSER COMPANY, Petitioner

v.

RUBEN BRACAMONTES, REYES PEREZ and
PABLO MARTINEZ, Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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This Supplemental Petition is to advise the Court of certain recent events relating to this case.

At issue in this case is whether the Fifth Circuit Court of Appeals acted properly in expanding coverage under the Migrant and Seasonal Agricultural Workers' Protection Act ("MSPA") 12 U.S.C. § 1801, et seq. to workers engaged exclusively in forestry contrary to the plain language of the statute and long-standing agency interpretation.

The Fifth Circuit reasoned that exclusion of forestry from MSPA coverage was inconsistent with the Act's purpose of preventing farm labor contractor exploitation of migrant and seasonal laborers. In contravention of this reasoning, Petitioner/Defendant Weyerhaeuser notes that long-standing remedial labor standards acts, such as the Fair Labor Standards Act and National Labor Relations Act include forestry workers, but not agricultural workers. Thus, forestry workers have available remedies from which agricultural workers are precluded. See Petition for Writ of Certiorari at 9.

Weyerhaeuser brings to the Court's attention a recent appropriations bill in which Congress elects to retain a clause excluding funds for the National Labor Relations Board from being used in connection with agricultural labor. See 134 Cong. Rec. H4269 (daily ed. June 15, 1988). The proviso states:

> Provided, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29

> U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 per centum of the water stored or supplied thereby is used for farming purposes.

Thus, Congress continues to exclude agricultural workers from coverage under the National Labor Relations Act, while forestry workers continue to be covered. The continued distinction between "agricultural" and "forestry" for purposes of NLRA coverage is persuasive of Congress' intention to retain such distinction for purposes of MSPA coverage.

Respectfully submitted,

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By:

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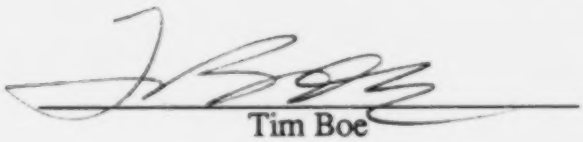
CERTIFICATE OF SERVICE

I, Tim Boe, do hereby certify that I mailed a copy of the above and foregoing Supplemental Petition to Marc Linder, Texas Rural Legal Aid, Inc., 259 South Texas, Weslaco, Texas 78502; Ronald Hole, Atlas & Hall, P.O. Drawer 3725, McAllen, Texas 78502; and Walter Passmore, Ewers, Toothaker, Ewers, Abbott, Talbot, & Hamilton, 1111 Nolana, P.O. Box 3670, McAllen, Texas 78501, on this 2 day of September, 1988.



Tim Boe